Women in Abusive Relationships: A Guide to The Law

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This pamphlet is intended as general legal information only. It is not designed to present a complete and precise statement of the law, and the law as presented may be changed in some particulars by future decisions or legislation. The pamphlet should therefore not be used by readers as a basis for resolving their specific legal problems which may have special facts giving rise to particular legal consideration.

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5th Floor, 405 Broadway
Winnipeg, Manitoba R3C 3L6, 945-3126

Wife Abuse Program, Manitoba Community Services
2 – 114 Garry Street, Winnipeg, Manitoba R3C 1G1 945-7245

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I. INTRODUCTION

Society is taking a new look at the problem of wife abuse. The Advisory Council on the Status of Women estimates that one in ten women in Canada is a victim of physical or mental abuse by their spouse. These statistics mean it can no longer be viewed as a matter involving a personal psychological problem of either or both parties. These statistics reflect a general attitude in our society that wife abuse is tolerated, that society does not interfere in these so-called "private" disputes. This attitude reinforces the abuser's view that violence is an acceptable part of a relationship. Furthermore, this attitude results in the victim feeling isolated and helpless to change the situation.

This booklet sets out various legal options open to women (or men) who are victims of abuse from their spouse. We hope it will provide useful information before a lawyer is consulted, and to explain the legal process.

If you are living in an abusive relationship, this book is for you. If someone you know is living in an abusive relationship, this book will help them too. In this booklet, when we talk about "spouses", "husband" and "wife", we mean people who are married, and those living "common law" relationships.

It is also important to understand the legal system and how it can help you.

There are two separate court systems you can use to get legal help. Sometimes both of them may be useful, but sometimes you may only need or wish to use one of them.

1. Criminal System

The criminal system involves the police, possible arrest, charges being laid, release "on bail", trial and sentencing. The system is designed to identify those people whose behaviour is criminal and to apply appropriate penalties to them.

2. The Family Court System

The Family Court is designed to deal with social arrangements of family life when the marriage or relationship is breaking up. Questions of concern are:

Separation	Divorce
Custody of Children	Visiting Rights
Maintenance	Property Division

Remember in your dealings with the legal system, a Court Order is not the only thing you need to ensure your protection. Orders can be, and sometimes are, disobeyed. Have a personal protection plan for yourself and your children to rely on if your husband disobeys the order and a new crisis begins.

There are many different people and offices available to help you. It is important for you to understand what you can expect from each of them.

1. **Crisis Centre** — An office staffed by specially trained persons equipped to give emotional support, counsel, advice, and information about abuse, support services and resources.
2. **Crisis Line** — A telephone service to refer you to places where you can get emotional support, counsel and advice during a crisis.
3. **Women's Shelter** — An institution offering room and board on a temporary basis for women who have been, or fear they may be abused at home. The shelter will also accommodate your children.
4. **Safe Home** — A private residence, offering emergency room and board to abused women. Safe homes are known to the local crisis centre or crisis line, and you must be referred to the home. Safe homes depend on confidentiality to remain safe for the women taking refuge there.
5. **Transition House** — Also known as "second stage" housing, a transition house is a place to live after the crisis is past, until you find a new home for yourself.
6. **Police/R.C.M.P.** — Assistance in a crisis, maintenance of the peace, including enforcement of court orders. Some forces have a victim assistance officer.
7. **Lawyers** — Will advise you about the law, and the decisions you face from a legal point of view. Will negotiate for you with your spouse's lawyer. Will prepare your case for court and will represent you in court.
8. **Lawyer Referral Service** — A telephone service operated by the Law Society of Manitoba. If you don't know a lawyer, and need one, the service will provide a name, address and phone number of a lawyer who has agreed to handle your type of case.

10. **Crown Attorney** —A lawyer employed by the provincial government to handle criminal cases in court. The crown attorney makes the final decision about what charge or charges an abusive spouse must face in court. The crown attorney has full control of the case, and is not responsible to you personally as a private lawyer would be.

11. **Magistrate** —A court official with power to make certain orders relating to criminal court process.

12. **Hospital Staff** —Provide emergency medical services in a crisis. Some hospitals may have a crisis team specially trained to treat all aspects of spousal abuse. Some may have a social worker or counsellor, either on staff or on call. In some communities, this service is provided by a nursing station.

II. ABOUT ABUSE

HOW DO I KNOW IF I'M ABUSED?

"Wife battering" and "wife abuse" are often used interchangeably to mean physical as well as mental abuse. If you are living with someone who is in the habit of hitting or threatening you, then you are battered or abused. Abuse can take the form of inflicting black eyes, bruises, broken bones, slaps, pushes, pinching or throwing things at you. Verbal abuse includes threats to your life or safety or use of vulgar or insulting language directed at you.

Mental abuse is harder to define but is equally crippling. Examples include:

- not allowing you any female friends
- being extremely jealous of any relationship you have with other men
- wanting to know about or control all your activities
- not giving you enough money for your needs
- damaging or destroying your personal property or hurting your pets.
- threatening to physically harm you or the children
- belittling you in the presence of other people

You are probably made to feel to blame for provoking your spouse, but as one woman put it: **"You may be his excuse but you are never the reason!"**

WHO ARE THE BATTERED WOMEN?

Many believe that wife beating is limited to lower income families or to certain ethnic or cultural groups. This is not true. Women from all backgrounds and all ages are facing this problem, silently believing this is only happening to them.

Battering does not happen only to married women. The words "wife" and "husband" are used throughout this pamphlet but they are meant to include "girlfriend/boyfriend" or "common-law" relationships.

WHY STAY?

Another popular myth is that women stay because they enjoy or deserve abuse. This, too, is false. Women stay for many reasons. Many would like to believe their husbands when they say they will not do it again, others fear retaliation, or have such low self esteem that they have come to believe that maybe they do deserve it, while others are too ashamed to tell anyone.

Often women believe in the traditional family life and do not want to break up their homes. Society places a lot of pressure on families to stay together and provide a two-parent home for their children. Some have tried to leave but found they could not make it on their own, either because of economic reasons or lack of family support.

Many women report that the violence comes in phases. The tension may build up over a period of days, weeks, months or even years. Then comes the assault. But this is sometimes followed by a blissful period in their relationship where the husband regrets his behavior and showers his wife and family with gifts and attention. A pattern of isolation may develop where the women is discouraged from maintaining her outside contacts. This increases the dependency on her husband and reduces the support system necessary for making an effective change in the relationship.

Leaving a marriage behind and starting out on your own is difficult—even without having the additional burden of being physically and mentally abused.

WHY LEAVE?

The battering will not stop and may very well get worse. Every person has a right not to be abused either physically or mentally. Every person has a right to live free of constant fear.

Studies show that the effects on children living in an abusive environment are harmful and lasting. Children learn to accept violence as a way of life, become confused about their feelings toward their mother, sometimes losing respect for her or even directing abuse towards her. Boys grow up thinking that it is normal to abuse their wife or girlfriend. Girls tend to accept violence in later relationships with men if it should happen, although it is not true that they are more likely to be attracted to violent men.

In the following pages, we hope to answer some of your questions. In order to make a choice to stay or leave you should be aware of your options. The law can offer some protection, but first you must realize you are a battered women, and you yourself must seek the help available. Difficult as it is to talk about it, no one can help you unless you tell someone and keep telling them until they believe you and give you the support you need.

The "crisis lines" listed under WIFE ABUSE SERVICES (page 45) are staffed by specially trained people who are prepared to help you sort things out, provide emotional support, understanding and information. They may also have, or be able to tell you about other support services available to you. They will also ask you to work out a personal protection plan so you will be prepared if a crisis occurs.

III. IN A CRISIS: BASIC SURVIVAL TACTICS

POLICE ASSISTANCE

If you are threatened with violence or are being attacked, try to get away from the situation using your personal protection plan. If you cannot, try to protect yourself with your hands and arms. Go to the nearest phone and call the police, or have a neighbour call the police for you. Winnipeg and Brandon have police forces. Outside these centres, contact the R.C.M.P. Here's how:
IN WINNIPEG OR BRANDON: DIAL 911
IN RURAL AREAS: DIAL THE LOCAL R.C.M.P. OR DIAL—0 AND ASK THE OPERATOR TO CONNECT YOU TO ZENITH 50,000. (This number will connect you to the local R.C.M.P.).

Tell them you are being threatened or attacked. If you think your life is in danger or if you think your children are in danger, or if a weapon is being used, tell the police. The police must know the urgency of the call.

If the crisis has passed but you would like a safe escort to a friend's or relative's house, a shelter for battered women or a motel, call your local police or R.C.M.P. detachment directly.

What Do I Tell The Police When I Call?

Try to speak clearly and give them your name, address and phone number. They will want to know:

- If your life is in danger
- If you are injured
- If there any weapons being used
- If there is any liquor or drugs involved

What Will The Police Do When They Arrive?

When the police arrive, they will assess the seriousness of the situation. They will often separate you and your husband and ask you separately about what happened. Tell them exactly what went on. How you react to them is very important. Try not to take out your frustrations on the police—you will get a lot more co-operation from them. Show them any visible signs of violence: marks on your body, torn clothing, damaged furniture, and so on.

Give the police the names of anyone who saw or heard the beating or heard threats. Even if you don't have a witness, your husband can be charged. In Manitoba, the police have been instructed to lay charges in wife abuse cases if they have reasonable grounds to believe a criminal offence has occurred. It is no longer up to the woman to lay charges against her husband.

If you have been beaten or think you might be beaten after the police leave, **say so**. If you want to leave, they may be able to help you to a safe place. Check the Shelters Directory under Temporary Housing (page 17).

Will the police arrest my husband?

The action the police take depends on the circumstances they find you in, the seriousness of the situation, and whether further violence is likely to occur. Some options the police have are to:

1. **serve your husband with an appearance notice.** This is a notice telling him to attend court on a certain date to face a charge. This would likely only be done if the police were satisfied that any assault was minor (known as simple assault), that no injury was suffered and that there was almost no likelihood of further violence. In some cases the husband may be taken to the police station and issued the appearance notice there, letting him go almost immediately.
2. **arrest him and charge him with an offence.** After he is taken to the station, the matter is reviewed, and a decision made whether to detain him or let him go on an appearance notice. This would normally occur in slightly more serious cases. In some cases while your husband is away with the police you may be advised to leave the home and go to a shelter. Your husband may still be a risk to you, even though the police are unable to lawfully detain him.
3. **arrest your husband and grant bail.** If any person has suffered injury, and/or if the police have reason to believe the violence may start again they will arrest your husband. The charge or charges will depend on what has happened and the extent of any injury. Even though arrested, he has the right to seek release "on bail". This means he may be released within a few hours or days. Conditions can be placed on him when he is released on bail.

   If you are afraid he may return and assault you again, tell the arresting officer that you are afraid, and that you do not want your husband to be able to contact you. They will make a note of your request and it can be made a condition of his release on bail that he not contact you. This will give you some protection until the charge or charges are dealt with on a final basis.
4. **arrest him and deny bail.** In the most serious cases of assault causing injury, or where your husband was on bail (or probation, or parole) when the offence took place, he may be denied release on bail and be kept in jail until the trial. This is not usual, and you should not expect it to be the result even if your husband is arrested.

What About Rape or Sexual Assault?

A husband can be charged for sexually assaulting his wife if any sexual act has occurred between them without her consent or willing participation. This also includes acts in which the woman participates because of threats or fear if she refuses.

If you feel you have been abused in this way, report it to the police.

What If I Am Injured?

The police can help you receive medical attention. When you arrive at the hospital or a doctor's office, you are entitled to private treatment. This is the case even if your husband has brought you to the hospital, or arrived at the hospital to see you. He does not have a right to visit with you, unless you allow it. It is in your own best interest to report the true cause of your injuries to the staff. This is often hard to do if your husband is standing in the same room. If you feel uneasy in this situation, ask the hospital staff for a private place to discuss your injuries. Then be open, honest and complete in your description of what happened.

The medical staff might not ask you how the injuries occurred. Medical staff are often embarrassed to ask about domestic disputes. They may be afraid that asking how your injuries occurred may upset you, or they may just not want to get involved in later court proceedings.

Whenever you receive medical attention from a doctor or hospital staff for injuries due to beatings, make sure you tell them how it happened and have them include it in your patient report. A medical report can be used as evidence:

- to prove the assault if criminal charges are laid
- to support a claim for compensation (page 26)
- to establish cruelty in a divorce hearing.

Supporting medical evidence will help convince the judge that you have indeed suffered cruelty at the hands of your husband. If you don't ever need this information you have lost nothing.

Incorrect information about the cause of your injuries in a medical report could be used as evidence against your case. Until you acknowledge the abuse and tell someone about it, no one can help you. It is difficult to admit to police and doctors but you have to be the one to start the ball rolling.

LEAVING YOUR HOME

After a crisis you have several options. In making your choice, remember that although your husband may have been arrested, he could very likely be released within a day or two, and may try to return to the home.

Option 1

You have a right to stay in your home even if it is owned or rented by your husband. If you choose to do so you will need a court order restraining your husband from returning. He may be restrained as a result of any of the following:

- Condition imposed as part of his release "on bail"
- Peace Bond (page 26)
- Family Court Restraining Order and order of "Sole Occupation" (page 33)

If you are living together without being married, you may not have the same rights to stay in the home. Each case may be different. Consult a lawyer immediately to advise you.

Option 2

You can leave home and stay with a friend or relative. Usually this will only provide a temporary solution.

Option 3

You can leave home and stay in a "shelter". See WIFE ABUSE SERVICES (page 45) for the shelter nearest to you. If there is none close to you, call the nearest crisis line, and tell them you need a safe place to stay. At some point during your stay at a shelter you will be asked to be interviewed by Welfare. They will assess your eligibility to determine whether the municipality or the province will cover the costs of your stay. Usually there is no charge to you for the time you stay in a shelter. However, it is in your interest to know if there will be any cost to you. Ask about this shortly after you arrive.

If you live in a small or remote community especially where everyone knows each other, there may be no place that is truly "safe" for you. It may be necessary for you to seek shelter or find a residence in another community.

If I Decide To Leave, What Should I Take With Me?

- some personal clothing and toiletries
- house keys
- charge cards
- bank book
- necessary medications
- personal identification

If you are bringing children with you bring them some:

- clothing
- their favorite toy or blanket
- their medicine, etc.

If I Leave My Husband, Can I Take The Children With Me?

If you and your husband have been living together and there are no court orders placing the children in the care of only one of you, then you both have equal rights to your children. You have as much right to them as he does. If you leave the home in a crisis and you think it is best for the children, you can take them with you, but seek legal advice before taking them out of the province.

See also Section IV (page 35) regarding custody of children and particularly what may happen if you leave the children behind. Seek legal advice as soon as possible to decide what to do about the children.

IMMEDIATE FINANCIAL ASSISTANCE

Where Do I Go For Money?

Ideally, you should try to save up a private little nest egg for just such an emergency. Even though it may not be much, it can help you through the first couple of days, before you are able to receive social assistance.

If you have a joint bank account with your husband where either of you is able to withdraw money, you are legally entitled to one-half of it. You may be tempted to take it all but see a lawyer before you take out more than one-half because you will have to account to your husband for "his" half and may have to pay it back.

If you have no money of your own, you can apply for "social assistance". Many people call it "welfare". It is money paid by the government to support those who need financial assistance. Going on welfare may seem scarier to you than staying in your present situation. Try to think of it as a temporary measure to tide you over until you and the children are safe and settled into a new routine. Then you can think about going back to school or finding a job and becoming financially independent.

If asking for social assistance is hard for you, talk it over with a friend, get information from a shelter or crisis-line worker. The more you know about it, the less it will intimidate you. If going to the Social Assistance Office to apply frightens you, ask a friend or worker to come along.

(i) Municipal Welfare

Generally, municipal welfare handles short term assistance. If you have just left your husband and are destitute (have no money whatsoever), you can apply to them for financial assistance. City welfare means assistance from the municipality of the City of Winnipeg. It too, is municipal welfare.

In Winnipeg:

Go down to the office in your district and apply. In your telephone book, you will find the offices listed in the section City of Winnipeg under "Social Services Department". If you have gone to a shelter, a welfare worker may be available there for you. Ask the staff when she will be in.

In Rural Areas:

Go to your town or municipal or local government district office. Some municipalities have staff especially assigned to work with welfare applicants. In the smaller municipalities, the secretary-treasurer handles it, in addition to his or her other duties.

What Information Will They Want?

You will need to have some identification with you. If you left it behind in your home, the police can return with you to get your personal effects.

They will want to know about any bank accounts, unemployment or disability insurance benefits, maintenance payments and/or income tax returns. They will inquire as to your family size and age, and whether you have any special needs, such as special diets.

How Do I Receive My Welfare Payments?

In Winnipeg, you must go down to the office every two weeks to pick it up.

In rural municipalities, the procedures may vary. Check with your municipal office.

(ii) Provincial Welfare

Generally, provincial welfare handles long-term assistance. If you are a mother with dependant children and you have been separated from your spouse for over 90 days, then you are eligible for provincial assistance.

How Do I Apply?

Go to your district office and apply. The district offices are listed in the Government of Manitoba Section under "Economic Security".

How Much Do I Get?

The provincial system calculates it in much the same way as the municipal welfare system does. They offer a few more basic necessities and will exempt a few more financial resources, resulting in slightly larger welfare benefits overall.

Both provincial and municipal welfare recipients receive a Health Services Card. It entitles you to essential medical and surgical care. This card covers certain types of prescriptions and limited assistance for eye-glasses, dental care or other special needs. Your welfare office can give you more information.

Will My Husband's Income Disqualify Me?

No. They consider your application separate from your husband's earnings as long as you are living separate and apart from each other.

How Much Do I Get?

You will receive the amount you need for your basic necessities minus the amount of financial resources that you already have.

Basic necessities include food, clothing (calculated according to the number of dependents and their ages), household and personal allowances, rent, heating fuel and utilities.

Your financial resources will include all forms of available income and assets (such as maintenance payments) but not family allowance cheques, casual gifts of small value, contributions other than maintenance for people needing special care, life insurance up to $2,000, room and board payments for foster children or, in some situations, vehicles.

Other Municipalities

Because each municipality is free to pass its own by-laws, the rates and amounts of social assistance differ throughout the province. If you are denied assistance or your assistance is inadequate, you can appeal to the Social Services Advisory Committee—Appeal Board.

Can I Get Welfare While Staying With Friends or Relatives?

In Winnipeg, it is possible to get money for groceries, clothing and personal effects.

In other municipalities, check with your local office.

Liens

In general, welfare cannot place a lien against your property when you receive social assistance. There are some exceptions, for example in cases of overpayment, or tax arrears. Under these limited circumstances if you ever sell your home you might be required to pay back some portion of the money you received in assistance from proceeds of the sale. No transfer of title to a new owner can take place until this lien is cleared. If the issue of a lien arises seek legal assistance.

HOUSING

(i) Temporary Housing

There are two types of temporary housing: the shelter and the safe home. A shelter offers accommodation for women and their children. They are all open 24 hours a day, 7 days a week and, if they are filled, will assist you in making other arrangements.

A safe home is a placement in a private home. This type of accommodation is more common in rural areas where shelters are unavailable.

Shelters

Osborne House 775-8197

Brandon Westman Women's Shelter 727-3644
Toll Free 1-800-862-2727

The Pas Aurora House 623-5497
Toll Free 1-800-442-0427

Thompson Crisis Centre 778-7273
Toll Free 1-800-442-0613

Crisis Offices with Safe Homes

Parkland Crisis Centre 638-8777

Flin Flon Crisis and Information Centre 687-8255

Portage la Prairie Women's Shelter 239-5232

South Central Committee on Family Violence 325-9956

Selkirk Co-operative on Abuse Against Women 482-1200
Toll Free 482-7100

Steinbach Family Crisis Intervention Centre
Toll Free (within 100 mile radius of Steinbach) 326-3431

(ii) Permanent Housing

The City of Winnipeg and the Province of Manitoba run a number of housing units for low income families. They range from townhouses to semi-detached or single family dwellings. One bedroom or bachelor apartments are available for the elderly. In Winnipeg, contact the Winnipeg Regional Housing Authority, 410—352 Donald Street, Winnipeg, Manitoba R3B 2H8.

In rural Manitoba, contact the Manitoba Housing and Renewal Corporation, Property Management Division, 287 Broadway Avenue, Winnipeg, Manitoba R3C OR9 or call collect 945-4652.

The provincial government also offers a rent subsidy for low income families (with children) to cover up to 90 percent of your rent. Call SAFFR (Shelter Allowance For Family Renters) for information on income qualifications at 945-2611 or toll-free 1-800-282-8069 (no long distance charges).

IV. THE LEGAL SYSTEM

There are two branches of the law that affect abused women—the criminal system and the family court system. You should try to become familiar with both of them. They provide different remedies and your role in the two processes is slightly different. If you can keep the two systems separate in your mind, you should not become confused or disappointed by the outcome.

THE CRIMINAL JUSTICE SYSTEM

You will be involved with the criminal justice system if you have been physically assaulted (including sexual assault), and the assault has been reported to the police either directly by you or by a doctor, hospital staff, or other person who has assisted you.

The criminal system will not be involved when you are a victim of mental or emotional abuse, unless it is combined with physical assault, or unless you have been threatened with injury or death.

The criminal system **may** result in:

i) your spouse being arrested and charged
ii) your spouse being released "on bail" or kept in jail without bail
iii) your spouse being tried in a court
iv) your having to attend as a witness at trial
v) your spouse being found not guilty
vi) your spouse being found guilty, sentenced, and possibly sent to jail or placed on probation
vii) a peace bond being issued to restrain your spouse from having contact with you

The criminal system **will not** result in:

i) court-ordered separation
ii) a custody decision being made
iii) maintenance for your support, or support of your children
iv) divorce
v) order of sole right to live in your home.

HOW THE CRIMINAL JUSTICE SYSTEM WORKS

Do I Have to Lay The Charges Against My Husband Myself?

Not anymore. The police can now lay charges against your husband. Until recently, a woman had to go down to the police station and lay the charges against her husband herself. Wife abuse was regarded as a private marital dispute and not a matter for criminal courts.

Now, as a result of an Attorney General's directive in 1983, the police must report all cases of domestic violence and treat them as they would any other cases.

What Will The Police Do?

1. If the offence is a serious one, the police/R.C.M.P. will arrest the offender. Example: a serious offence would be one where a weapon was used to injure or threaten you.

2. If the offence is not as serious, the police/R.C.M.P. will arrest the offender only if they have good reason to believe the offence will continue after they leave. Example: a minor offence would be where you had been slapped or pushed, perhaps leaving bruises, but not requiring medical attention. This is called "simple assault".

3. If the offence is not a serious one and the police/R.C.M.P. have decideed not to arrest your husband, they will give him an "Appearance Notice". This slip of paper explains that he has been charged with an offence and that he must appear in court for a future date and time.

4. If the police do not have any reasonable grounds to believe an offence has occurred, they may be unwilling to press charges. If the police do not lay a charge, you can have charges laid against your husband. The procedure is called a private prosecution. You must go down to the R.C.M.P. station or a magistrate's office and give the information to a magistrate. An appearance notice will be sent to your husband advising him when and where to appear and that he has been charged with an offence. Both of you must then appear in court before a judge, each stating your side of the story, and backing it up with witnesses or other evidence if possible. The judge will then determine if your husband is guilty or not and sentence him if appropriate. A common result in cases of private prosecution is for the accused person to sign a "peace bond" which could contain a condition that he not have any contact with the victim for up to one year.

Can The Charges Later be Dropped?

Unless you have started the case as a private prosecution, that is something that is decided by the "crown attorney" who is prosecuting your husband. You have no control over that. The charges usually are not dropped.

Why Wouldn't The Charges be Dropped if I Asked Them to? This Is My Case After All!

Not quite. The provincial Attorney General provides a lawyer to prosecute your husband. That lawyer, called a crown attorney is responsible to the government, not directly to you.

Although this is affecting you in particular and you might think of this case as a private matter between you and your husband, the government has an interest in ensuring "law and order". Wife battering is a crime. Assault is against the law.

What If We Get Back Together After He Is Charged?

The crown attorney may proceed on the charges anyway. The Attorney General has issued a directive that domestic assaults are to be processed as would any other assault case.

You might feel that this new policy makes your situation even more dangerous. But the advantage is that you should no longer be threatened or abused into dropping the charges. You can honestly tell your partner that it is out of your hands. You are not the one who is charging him.

If you are being pressured or threatened by your spouse, or anyone else, to "drop the charges", contact the crown attorney handling the charges and advise him/her of the situation and the pressure on you.

If you want to reconcile with your husband you should:

- contact the counsellor or advisor who has assisted you since the assault and discuss your feelings towards your husband
- inform the people working on the case (for example, the Women's Advocacy Program and/or the crown attorney) of your decision
- Be sure you have a good protection plan for yourself and your children

The fact that you have reconciled with your husband will not end the court process. The trial is not about whether you and your husband are happy toget her now. The charge and the trial are about an event (the assault or other offence) that happened and nothing can undo or erase the fact that it happened. It may be that when

deciding the proper sentence, the judge will consider that you have reconciled with your husband.

How Soon Will This Go To Court?

It could be weeks or months before the matter comes before the court for trial. Your husband is entitled to several one-week to two-week postponements to prepare his case. These are called "remands" and can delay an early hearing of the case. Although your husband may have several scheduled court appearances, the average case will take about three months before the actual trial will be held. This is only an average, and your case may move more quickly or slowly.

If My Husband Wants To Plead Guilty, Will There Be A Trial?

No. Your husband could choose to plead guilty on his first appearance in court or at some later appearance. If he does so, the judge will hear the facts, his prior record, and any recommendations by the crown attorney and the defense for possible sentencing. Your husband will then be sentenced.

What Part Do I Play in a Trial?

You will be subpoenaed to appear in court as a witness for the crown attorney. It could be weeks or months before the matter comes before the court for trial if your husband pleads not guilty. This subpoena will be delivered to you and will tell you that your husband has been charged, what he is being charged with and the time and location at which you must appear to testify. You must appear in court at the time and place specified. If you fail to appear the judge may issue a warrant, which is a legal paper giving power to arrest you.

If you have any questions about the subpoena, contact the Victim-Witness Assistance Program or Women's Advocacy Program in Winnipeg or the crown attorney's office in rural areas.

The Women's Advocacy Program

This program, currently only available in Winnipeg, provides abused women with legal information and short-term counselling. A legal advocate will ensure you understand your legal rights and options as they pertain to both family law and the criminal justice system. You will be provided with information about the charges and explain how the court system works. Assistance can be given to you if you require legal protection immediately or in future in cases of breach of court order, uttering threats, mischief, and break and enter.

The program also provides a counsellor to ensure you know of community resources you may need to utilize, offering you support, referrals, and practical information concerning how to protect yourself and your children in future. The overall goal of the program is to help women whose partners have been charged with assault or other related offences.

If I Get a Subpoena, Do I Need a Lawyer?

In general, you do not need a lawyer for the criminal aspect of your situation. You are not being charged with any crime, you are just going to court to give evidence about the crime which was committed against you. Although you are the victim, it is the crown attorney who proceeds with the charges against your husband. In certain situations, you do need a lawyer. For example, if you think you will have to answer any questions which may incriminate you, you should contact a lawyer.

Evidence might incriminate you if it includes facts concerning your own conduct which may have been criminal. For example, if an assault occurred at a time you and your husband were using an illegal drug, any evidence you give in court about that drug use might incriminate you, giving enough facts to charge you with a crime or offence.

There are laws to protect you against being charged because of evidence you give. If you have any reason to fear or suspect that you may have to give that kind of evidence, you should contact a lawyer.

What If I Have to Miss Work to Testify?

You have a legal duty to appear in court, so your employer must give you time off if you are subpoenaed to appear during working hours. However, your employer does not have to pay you for this time unless it is the company's policy to do so, or the union contract provides for this. Check with your union representative if you are unionized.

The work of many women is to provide child care at home. Unfortunately there are no facilities to take over that care while you attend court, nor does the court have a day care centre for your child while you are giving evidence. You will have to arrange with a friend or relative to care for your children while you go to court. Because you do not know how long the trial will be, it is best to make such arrangements well ahead of time and for the entire day of the trial.

What Happens at the Trial?

Evidence is usually in the form of spoken testimony, but it can also include physical evidence such as torn clothing or the weapon used to injure or threaten. Each witness is first questioned by the crown attorney and then cross-examined by the defence lawyer. Afterwards, the defence presents its evidence. The defence lawyer questions each of his or her witnesses and then the crown attorney cross-examines them.

Once the lawyers finish asking the witnesses questions (it is possible to call a witness back to the witness stand), they make closing speeches to the judge before a final decision is made.

How Will I Be Called Upon to Testify?

The crown attorney's witnesses give evidence first. The attorney will call you to testify. You must go to the front of the courtroom to be sworn in. The court clerk will ask you to place your right hand on a Bible, state your full name and swear to tell the truth. If you do not wish to swear on the Bible, you may affirm or promise that you will tell the truth.

Courts are open to the public. Bring a friend with you for support. If possible, go down to court any day before the trial date and watch some other trial. It will give you a good idea of what to expect, and where to go when you have to give evidence.

Is It Difficult to Convict a Batterer?

Although you know you have been assaulted, if your husband pleads not guilty, he will not be convicted unless his guilt is proven **beyond a reasonable doubt.**

There is a high standard of proof required to convict a person of a crime. Often, in cases of wife abuse, there are no witnesses to the crime. All the judge may have to go on is your story and that of your husband. In order to find your husband guilty, the judge must be satisfied beyond a reasonable doubt that your husband actually did commit the crime he is charged with.

NOTE: Your husband does not have to give evidence in his defence. It is the crown attorney who must prove he is guilty, and not your husband who must prove that he is innocent.

If It Is So Difficult to Convict, Why Should I Bother Involving The Law?

The police can give you and your family protection from futher harm. It is important that your husband see that what he is doing to you is considered a crime.

Often a man will continue to beat and harass his wife because he believes she will do nothing about it. However, if criminal charges are laid against him, he will know you mean business. Although he may not be fined or imprisoned for the first offence, the court may still have some effect in changing his behavior.

The court may also attach conditions to his freedom. For example, the court may order that he attend counselling sessions for batterers. If he dis obeys these conditions, he can be arrested, and face additional charges of breach of the order. If he is convicted of assaulting you and is charged again in the future, the fact that the previous convictions do exist would be used against him in the sentencing.

What Could Be The Sentence If My Husband Is Found Guilty, or Pleads Guilty?

Sentences vary depending on the seriousness of the crime, the offender's prior record, the remorse shown by the offender, etc. Sentences can be any of the following:

- **Absolute Discharge:** The person has been found guilty but will not get a criminal record. It is a forgiveness for the first offence. Even though it may not have been the first time your husband abused you, if it is the first time he has been charged and convicted, he may still get an absolute discharge.
- **Conditional Discharge:** The court sets down conditions (eg. keeping the peace for six months, attending counselling for batterers, etc.). If these conditions are met, the discharge becomes absolute and the offender is not left with a criminal record.
- **Suspended Sentence:** The offender is found guilty but as long as he obeys the conditions set out by the court, he does not have to go to jail. He is however, left with a criminal record.
- **Probation:** The offender will be placed on probation if he receives either a conditional discharge or a suspended sentence. The offender may have to report regularly to a probation officer or meet other conditions of probation; for example, attending a batterers treatment group or non-communication with spouse. If he fails to do so he can be facing further charges of "breach of probation."
- **Fine:** Money is paid to court as punishment.
- **Imprisonment:** (Not likely on a first offence of assault).

CAN I BE COMPENSATED IF I WAS HURT?

Yes, as a victim of a violent crime, you may be entitled to get compensation from the Criminal Injuries Compensation Board if:

- the crime is listed under the Criminal Injuries Compensation Act (usually violent crimes, including simple assault and assault causing bodily harm).
- the crime is the direct cause of the injury.
- you have reported the crime to the police as soon as possible.
- you have a claim (over $150) for loss or damage of property for things like clothing or eye glasses.

In a case where death occurs, dependents may be able to file a claim.

For further information, contact the Criminal Injuries Compensation Board at 775-7821.

HOW DO I KEEP MY HUSBAND AWAY?

After the trial is over, and any jail term has been served, your husband will be free. If he begins to threaten or harass you there are a number of ways of protecting yourself, each is discussed in detail in this booklet. He may be restrained as a result of:

- terms of probation on which the court placed him, either as part of a conditional discharge or suspended sentence.
- a peace bond.

You may have him restrained as a result of the Family Court System (page 33) using an order of prohibition and non-molestation.

USING A PEACE BOND

What If I Have Not Been Assaulted But I Am Afraid My Husband Will Hurt Me? Can I Get Any Protection From the Criminal Courts?

Yes, you can. It is called a "peace bond". If you are afraid your husband will harm you or that he is likely to commit a crime of violence against you or your children, a court can issue an

order against him requiring him to keep the peace for a certain amount of time (as much as one year) and to obey any other conditions set out by the court. One of the usual conditions ordered by the Court is that the person signing the bond not have any contact or communication with the person who requested the bond.

How Do I Get A Peace Bond?

You must make and sign a statement called **"an information"** saying that you fear for your safety and stating the reasons why you are afraid. An "appearance notice" or summons will be sent to your husband requiring him to appear in court and give his side of the story. The more urgent your situation, the sooner he will be required to appear. Both of you are entitled to have a lawyer represent you.

If he fails to appear, the court may proceed without him and give you the peace bond.

If your husband pleads guilty, he will consent to obey the terms of the peace bond. If he pleads not guilty, then the matter will go to trial at some later date and you must satisfy the judge that your fears are well-founded.

If you want a condition such as "your husband is not to phone you" added to the peace bond, make sure the judge is aware of this.

To start the process, go to your local Magistrate's office or the nearest R.C.M P. detachment and explain what you want. On the other hand, you may wish to retain a lawyer to assist you.

How Do I Use a Peace Bond?

Get a certified copy of the peace bond from your lawyer (if you used one) or from the court office where it was issued. You can show it to the police if your husband bothers you again. If your husband disobeys any of the conditions on the order, he will be arrested by the police if you report it. You must let the police know if your partner has breached the peace bond. Otherwise it will have no effect at all.

How Long Is A Peace Bond Good For?

It is good for the period set out in the order, the maximum time period being one year. It is not "renewable" at that time. But you can obtain a new peace bond if your partner again does something that makes you fear for your safety. If the peace bond says that a specific person is not to have any contact or communication with you, this includes contact by telephone, by letter or in person. If you decide that you want to have contact with this person before

the peace bond expires, it is wise to inform the officials in the office where you first applied for the peace bond.

Do I Have To Be Married To Get a Peace Bond?

No. You can get a peace bond against anyone who causes you to fear for the safety of yourself, your children or your property.

THE FAMILY LAW SYSTEM

You will find this system different from the criminal system. You must hire your own lawyer if you wish to be represented. The family laws regarding separation and division of property will vary from one province to another because they are administered provincially. Divorce laws, however, are the same across Canada.

The family law system settles private disputes between people in family relationships.

Each individual can hire his or her own separate lawyer. They try to settle the matter through negotiations. Failing that, the parties can go to court and have the matter settled by a third party—the judge.

Legal Assistance

If you decide to separate from your partner, you should be aware of your family law options. This is intended as a general guide to the law; you should consult a lawyer about specific questions or concerns.

Choosing a lawyer may seem difficult if you've never dealt with one before. Keep in mind that you are hiring his/her services. Bring along a list of questions and give the lawyer a copy. This way you should leave with most of the answers. It is also a good idea to take notes for future reference.

Legal advice doesn't necessarily include emotional support. A lawyer has little time or the expertise to help you sort out your emotional problems. Consider seeing a counsellor for this kind of support. It will be less costly and less frustrating for you.

At the same time, remember that only a lawyer can take your case to court for you, and only a lawyer should be giving you legal advice. Well-meaning friends and relatives will give you emotional support, but they are not qualified to give you legal advice; neither is your spouse. Relying on such advice can often confuse you, and lead you to make decisions you will later regret.

How Do I Find a Lawyer?

- Ask a friend or relative or someone you know who has been through a separation or divorce.
- Ask a worker in the shelter or on the crisis line if they can suggest someone.
- Contact Legal Aid Manitoba if you can't afford a lawyer. (See below).
- Call the Law Society Referral Service at 957-1380 or outside Winnipeg, in Manitoba, call toll-free 1-800-262-8800.

Your call to the referral service will be recorded on an answering service and a worker will call you back. The referrals are given over the phone. If it is an emergency, say so on the answering service and they will call you back as soon as possible.

The Lawyer Referral Service guarantees that the fee for the first half hour consultation will be no more than $25. Of course, you are under no obligation to retain that lawyer if you do not feel comfortable with him or her. The people who answer the calls at the Lawyer Referral Service are qualified to give you basic legal information. If you request it, they will also mail out pamphlets on different legal topics to any address you specify. Look under "Lawyers" in the Yellow Pages of your phone book for names of other lawyers.

What If I Can't Afford a Lawyer?

You may qualify for provincial Legal Aid which will cover the cost of your legal fees. Legal Aid pays lawyers a specific rate. You can be covered in two ways:

If you have a lawyer or know of one, ask him/her if they are willing to act for you under the Legal Aid plan. Your lawyer will fill out an application, giving details about your financial situation and your legal problem.

You can make an appointment with a Legal Aid Office (See Resources). They will take your application and either appoint a lawyer for you or appoint the lawyer you request if that lawyer takes Legal Aid cases. The lawyer might be a Legal Aid staff lawyer or be in a private practice.

How do I qualify?

Legal Aid uses a financial guideline to determine if you are eligible. They normally look at your income separate from your husband's. At the time of writing (January, 1987) the guidelines were:

Number of people in Family	Allowable Gross Annual Income
1	$ 9,839.00
2	12,981.00
3	17,365.00
4	20,010.00
5	23,318.00
6	25,468.00
7	28,032.00

To calculate your income, day care expenses are deducted. However, maintenance payments are added to your income. Other factors may affect your eligibility, for example, if you have many debts, they may increase your allowable income, or, if you and your husband have many joint assets, you may not qualify.

If an individual is just above the guidelines Legal Aid may assign a lawyer but require the individual to make monthly payments towards the fees.

To be sure, contact the Legal Aid office nearest you for specific information about your situation.

What If My Husband and I Have Assets, But I Have No Access to Them?

Legal aid may still appoint a lawyer for you but they may require you to sign a "direction to pay". This means that if later you get a settlement, you will have to pay back Legal Aid with some of this money.

What Proof of Earnings Should I Submit With My Application?

You should submit a pay stub or letter from your employer confirming that you are employed there, stating the date you began work and your current salary, or

- Unemployment Insurance Commission (U.I.C.) stub, or
- Pension or Worker's Compensation—proof can be a stub or statement or even a photocopy of your last cheque, or
- Employment course stub
- If you are on welfare advise Legal Aid which welfare office serves you
- If you are self-employed, your last income tax return.

What If I Need a Lawyer Now?

Again, if you are dealing with a lawyer in private practice and there is no time to wait for the Legal Aid certificate, your lawyer can call the Legal Aid head office, explain the problem and get telephone approval right away.

If you don't have a lawyer and can't afford one, call the Legal Aid head office in Winnipeg or, in rural Manitoba your nearest Legal Aid office, and tell them that you have an urgent problem. Some Legal Aid offices have drop-in hours both during the day and the evening and will arrange for you to see someone as soon as possible.

If I Have Gone Through Legal Aid Before, But Then Returned to My Husband Will I Have a Hard Time Getting Legal Aid Again?

If you have had a Legal Aid certificate once before and then reconciled, a subsequent certificate for new proceedings will normally be issued, provided that you continue to qualify. If there are several separations and reconciliations for which certificates have been issued however, there may be some reluctance by Legal Aid to issue another one. It would then depend on the circumstances.

If I Don't Qualify For Legal Aid, What Will a Private Lawyer Cost Me?

It is difficult to determine because legal fees vary depending on:

- Time spent preparing the case
- Time spent in court
- The expertise and experience of the lawyer and the hourly rate they charge
- The amount of property involved

In the initial consultation, fees and methods of payment should always be discussed. In addition, a client should ask for a retainer agreement, setting out the services to be rendered by the lawyer and the fees for such services. Such an agreement will protect both the client and the lawyer. If the case is likely to be an uncontested one, the lawyer may charge a flat rate.

You should not let the cost keep you from seeking legal advice. If you call a law firm they will tell you what they charge for initial consultation. Some lawyers may not charge for this. Also, remember that if you call the Lawyer Referral Service, the first half hour consultation with the lawyer you've been referred to will cost you no more that $25.00. If all you want is legal advice, Legal Aid can provide that free of charge, regardless of your income.

Are Private Lawyers and Legal Aid Lawyers My Only Option?

While private lawyers and Legal Aid lawyers handle most aspects of a case, the provincial Attorney General will appoint a lawyer for you in two specific situations:

1. If your maintenance payments are to be paid through the Maintenance Enforcement Branch of the Attorney General's department as a term of any court order you obtained, the Enforcement Officer will take steps to collect the maintenance payments from your husband. If you have had problems receiving your maintenance, contact the Maintenance Enforcement Branch at 945-7133.

Remember to keep them posted as to any change in your address.

2. If you have a custody order from another province and your husband took the children from you and brought them to Manitoba, the province would provide you with police assistance, as well as with a lawyer to help enforce your out-of-province custody order. Turn to page 35 for more information on custody orders.

Family Court Emergency Orders

The Family Law system offers a legal way to resolve a large number of problems you may have. Among others, it can be used to get emergency orders (ex parte orders) in a crisis situation. These can include:

- an order giving you the right to live in the marital home or apartment without your husband (sole occupancy order)
- an order restraining your husband from coming to your residence, and/or from bothering or harassing you (order of non-molestation)
- an order giving you temporary custody of children
- an order that the police give assistance to enforce the order

If the order includes "police assistance" you will need a **certified copy** with the court seal impressed on it. You can get one from your lawyer or from the court office. If you think you may need the extra protection, it will be worth the small extra cost for a certified copy of the order.

In an emergency, an order can be obtained very quickly, sometimes within the first day, but more often within two days. You will likely need the assistance of a lawyer who will advise you if your case is one which the courts will view as an emergency. Your lawyer will also prepare the necessary documents and go to see a judge to get the order.

After the emergency has passed, the family court can deal with any of the following concerns:

- separation
- custody
- occupancy of the home
- maintenance for you and/or children
- division of property
- divorce

These may be dealt with separately or in almost any combination. Which the court deals with depends on what you ask for in your application document (called a petition).

SEPARATION

Just because you are married does not mean that you must live together. Anyone may leave their partner whenever they like.

Why is a Separation Agreement or Order Useful?

Separation usually signals the end of the marital relationship, so it is often necessary to consider other issues at the same time. This can be done outside of the court process, by agreement, or as a result of a court order.

A separation agreement or order will also fix the date on which the separation occurred. This is useful for later property settlement and divorce proceedings.

Separation by Agreement

If they wish, a couple can simply agree on the terms of their separation verbally. However, those terms would not be enforceable unless it can be shown that both parties actually lived up to the agreement.

Many couples, will choose to have their agreement set out in writing as a contract, signed and witnessed. The terms could include how the property will be divided, how much maintenance will be paid and who will have custody of the children. The courts reserve the right to change any agreements on such matters as custody or maintenance for children.

Written separation agreements are useful for tax purposes, and provide a guideline as to what is expected of each spouse. But if one of the parties does not honor the agreement, the other must take him/her to court and sue as they would with a contract. This is time-consuming and expensive in terms of legal fees. You should consult a lawyer for advice on what is best in your particular circumstances.

If you did not have your own lawyer to negotiate the terms of an agreement between you and your husband, you should get independent legal advice before you sign the agreement. It is best to make sure that the agreement includes all of the matters that should be included, and that the agreement is fair.

Separation orders

It is sometimes advisable to go directly to court for a "separation order". The terms of the separation will be set out in a court order and will be enforced by the court. If you are concerned that your husband will not make any maintenance payments he is required to make or if you have concerns about custody, it might be best to go directly to court for an order.

CUSTODY OF CHILDREN

If you have children, determining who your child will live with is a crucial decision. If you want your children with you, but your husband doesn't agree to this, you can apply for a court order granting you custody. A custody order is a declaration by the court giving you the legal right to raise, care for and control the upbringing of your children. A lawyer will help you to apply for this order. It may take several months for the court to decide the outcome of your custody case. In the meantime parents are encouraged to make satisfactory arrangements for the care of the children. Where there is a real or perceived danger to the children, or concern that one parent may run off with the children the court can make a temporary custody order. Ask your law lawyer about this.

Be sure to seek legal advice as soon as possible if there is any dispute over custody of your children.

What Happens in a Custody Dispute?

In Winnipeg, where custody is in dispute, the judge will refer the parents to mediation with a family counsellor who will try to encourage the parents to work out an agreed arrangement. If mediation fails, a home assessment will be ordered and a report prepared by the counsellor or social worker will be filed with the court. Judges rely quite heavily on such home assessment reports in determining who should have custody.

How Does a Judge Decide About Custody?

Many women fear that they will lose custody of the children if they do not have a job at all or have a low income. In fact, custody is never decided only on the basis of financial ability. The judge's decision is based on what is in the children's best interests and many factors come into play. For instance, what kind of relationship do the children have with their mother? Their father? Which of the two is a better parent? Are they both good parents? Do the children have special needs that are best met by one of the parents? How old are the children? Are they boys or girls? What kind of long-term plans do you have for your children's care and education?

As you can see, it is not a simple matter. Nor is a custody order a final decision. It can be changed if there is a substantial change in circumstances which show the court that the existing order is no longer in the children's best intersts.

I Would Rather Avoid Going to Court. What If My Husband and I Just Agree to Let the Children Live With Me?

You can do that. But if you are worried that your husband won't honor the agreement, you should get a court order. Then you can be sure that the police will act to enforce the order if that becomes necessary. Otherwise it is up to the crown attorney whether or not to press charges against your husband if he takes the children away from you.

My Husband and I Are Not Legally Married. Does That Make a Difference In The Custody of our Children?

If you and your child's father have never lived together after the child's birth, and the child lives with you, you have sole custody automatically.

If you have lived with the child's father after the birth of the child, each of you has an equal right to ask the court for an order of custody.

Will I Lose My Rights to Custody If I Leave and Don't Take the Children With Me?

Not necessarily. If you start a custody action within a few days of leaving your husband, you will not hurt your chances of gaining custody. But if you delay, the court may think you don't really want the children. Or, the court might be unwilling to uproot them from their routine of living with the other parent.

What Can I Do If My Husband Comes and Takes The Children From Me?

The basic law is that a mother and father have equal rights to the custody of their children. However, once a custody order has placed the children in the care of only one parent, the other parent no longer has the basic right.

Where there is a custody order in favour of one spouse, and the other spouse takes the child away without consent, that spouse could be charged with the crime of child abduction under the Criminal Code of Canada. The Attorney General's office provides police assistance and a lawyer to prosecute. If the child has been taken out of the province, the Attorney General's office along with the police would contact the police and the Attorney General's office in the other province to arranage for the return of the child to Manitoba.

If there is no custody order in existence but after separation either spouse takes the child without the other's consent, they may

be charged with the crime of abduction. Before a criminal charge of abduction will be laid in these circumstances, the Manitoba Attorney General must personally consent. This would likely happen either: if the parents and child have been living together and suddenly one parent takes a child away from Manitoba without the consent of the other parent, intending to deprive that parent of his or her rights as a parent; or if separated parents have agreed in the past that a child is to live with one of them, and the other parent later decides to take the child away without a court order.

A parent charged with the crime of abduction might have a defence to the charge if he or she removed the child to protect the child from danger.

ACCESS

A parent who does not have custody may ask for access. Access rights (or visiting rights) are denied only in exceptional situations where the parent without custody would be likely to cause the child physical and/or emotional harm. If you have custody and your husband's visits would likely be used by him to harass or annoy you, the judge might make an order for special arrangements; for example, that the children be picked up by your husband at a safe place away from your home.

But just because access may be unpleasant or inconvient to you will not be a reason for the judge to order no access, or special circumstances of access. Your children have a right to know both parents. Access orders allow them to enjoy their rights.

PROTECTION FROM PHYSICAL AND EMOTIONAL HARASSMENT

You can apply for a court order under the Family Maintenance Act restraining your husband or common-law spouse from "molesting, annoying or harassing" you or the children in your lawful custody. You can also apply for a court order giving you the right to continue occupying the family home alone, even though your partner is the owner or if it is rented in his name, and an order prohibiting him from coming to the home.

If you obtain a restraining order and your husband disobeys it, he could be fined or imprisoned or both. Call the police if he violates the order.

SUPPORT/MAINTENANCE

Is My Husband Obliged to Support Me After I Leave Him?

One general rule is that both you and your husband have an obligation to become financially independent of one another. You are expected to take all reasonable steps to achieve this.

A second general rule is that until you are both financially independent, each of you has a duty to provide for the support of the other, even if you are separated.

If either of you can show that you are in need of support, and that the other can afford to assist you, the court may make an order.

The court order will state:

- how much is to be paid
- what day it is to be paid
- how often it is to be paid
- whether it is to be paid directly to you, or through Maintenance Enforcement.

Can He Be Ordered To Pay Me Because of the Beatings?

No. A spouse's conduct does not affect the amount of maintenance payments. The law states simply that a judge is not to consider the conduct of either person when making a maintenance order. Orders for maintenance are based on your needs and his ability to pay, and are not meant as a form of punishment.

Is My Husband Obliged To Support The Children?

The law is that both parents have an equal duty to provide for their children. If you have custody of the children, in almost all cases the child's father will be ordered to pay towards their support.

This applies both to the children you and your husband have, and to children you have from a previous relationship if your husband has had a father/child relationship with them.

How Much Maintenance Will the Court Order?

There is no "normal" amount of maintenance payments. The judge will look at a number of factors, including:

- your property and your husband's property
- whether you have a paying job
- his capacity to provide support
- the age and health of both of you
- the expenses and needs of each spouse in supporting themselves.

How Often Do I Receive Payments?

It depends on what the order states. The judge may order monthly, weekly or bi-weekly payments either indefinitely or for a specified period of time. Or the judge may order one large payment or transfer of property.

Lump sum payments of maintenance or transfers of property are rarely ordered when the maintenance is for children. This is because child maintenance is intended to help support children on a daily basis. Instances where lump sum amounts are ordered are where the paying spouse has assets but no regular income.

Can the Amounts of Payments Ever Be Changed?

Yes, but only if either you or your spouse's circumstances have changed substantially, such as

- a change in employment of either of you
- unexpected expenses for the children, for example, because of illness or injury.

What If My Husband Refuses To Make His Payments?

The Attorney General's Enforcement Division has authority to enforce the maintenance order, if the payments were to be made through the court and this formed part of the order.

You will not require a lawyer. They will see to it that he pays.

What Can The Enforcement Office Do To Collect?

Should payment not be made as required, the Maintenance Enforcement Program will take action immediately to enforce the order. If your husband is working they will garnish his wages. This means that part of your husband's wages will be seized directly from his employer before being paid to your husband. If garnishment is not possible or does not meet the entire debt, the enforcement office, as a last resort, will take him to court and may ask the court to send him to jail for up to 30 days for failure to pay the money. The Attorney General's office will provide a free lawyer for you at the court hearing.

Should your husband move out of Manitoba, he still is required to make his maintenance payments. If he moves to another province, the Attorney General's office will send your order to the other province and ask that they enforce the order on your behalf. In addition, Manitoba has an arrangement with most of the states in the United States and many other countries whereby they will enforce Manitoba orders when a person required to make payments under the Manitoba order has moved there.

PROPERTY

Jointly Owned Property

Any property which is owned jointly, like joint bank accounts, savings bonds, or your home or other real estate is "already shared" under our law.

That means each of you has an equal right to possession of all of the items of property. If you take possession (for example, empty the bank account) you are responsible to the other person for half of the value.

In an emergency it may be necessary for you to have cash available to you. Although there is nothing to stop you from taking all the money in your joint account remember that if you do, you may have to account for it against other property rights you have, or you may have to pay some of it back at a later date.

Other Property

People who are married, **but not those living together without having been married,** are each entitled to leave a marriage with half of the value of all the property they accumulated while they were married.

This does not necessarily mean that each item of property must be split. The system is designed to ensure that you get the value of your share. One spouse might want or need all the money, while the other might want the car.

If the spouses can't agree how best to share the property fairly, there is a process for the court to do so, called an accounting.

It is a long and often expensive court process. You cannot assume the property will be divided by this process within a few short weeks of a crisis or separation.

Because of the amount of time it will take to divide the property, it is in your interest, if you are leaving home, to take with you whatever you will need, including money.

Again, if you do so, remember that you may have to return or pay for what you take if it is worth more than half of all your property.

Property owned before marriage does not have to be shared unless you were planning to marry each other when it was bought, and it was bought for the two of you. Property acquired during marriage as a gift to one of the spouses by a third party with the intention to benefit only that one spouse, and property which was received as inheritance by one of the spouses with the intent to benefit only that spouse, does not have to be shared.

What Happens If I Leave Things and My Husband Starts Disposing of Them Before the Court Makes its Decision?

If your husband tries to sell, give away or destroy some of the property you are entitled to, you can have your lawyer apply immediately for an order restraining your husband from doing this prior to the final court decision. He may owe you for half or all of the value of the goods sold or destroyed.

DIVORCE

Divorce puts a complete end to your marriage. You might get advice from family and friends urging you to break all ties with your husband. It is some times reassuring to let other people make big decisions for you. Take the time to make the decision that is right for you.

Divorce cases are started by filing a petition in court. You can do this yourself, but there are many reasons why it is helpful and advisable to consult a lawyer. To obtain a divorce in Canada, (divorce laws are the same across the country), you must show that the marriage has broken down.

What Are The Grounds for Divorce?

The court will accept any of the following as proof that the marriage has broken down.

- The parties have lived separate and apart for more than one year
- Of particular interest to battered women is the issue of cruelty. To get a divorce because of cruelty you have to prove to the judge that you were treated with such physical and/or mental cruelty that it made living together intolerable. What conduct is considered "cruel" may vary from judge to judge. Also, what is cruel to one person may not be cruelty to another. You must prove this cruelty has had a substantial effect on you, making it intolerable for you to continue to live together.
- Adultery occurs when a married person voluntarily has sexual intercourse with someone other than his/her spouse regardless of whether or not the spouses are living together at the time. If either of you does so, the other will be able to ask the court for a divorce.

You may be refused a divorce if the judge determines that you have forgiven the behavior and reconciled with your husband. This is called "condonation".

Many facts may suggest condonation, but if you attempt to reconcile with your husband and it doesn't work out in less than 90 days, condonation is not an issue.

Generally your conduct towards your husband would have to amount to a renewal of the marriage, and forgiveness of the act of cruelty or adultery.

However, even if the judge decides that you have "condoned" the fault, the divorce could be granted anyway if it would be in the public interest to do so.

The helpful aspect of obtaining a divorce because of your spouse's adultery or cruelty, is that you can get the divorce right away. If you can't prove either behavior or if you think you may have condoned it according to the definition, your divorce will not be granted until you and your spouse have lived separate and apart for at least one year.

Divorce Hearing

Where parties consent to a divorce, it is possible to obtain a divorce by affidavit (a sworn written statement) and you do not have to attend court. Where there is disagreement, and if you use a lawyer, your lawyer will ask you questions which you will answer for the court. If cruelty is your ground for divorce you will have to tell the court about the cruelty in detail. This is often a difficult thing to do. Family court judges are usually sensitive to the emotional strain this involves and will sometimes stop your evidence when they have heard enough to convince them that you are entitled to a divorce.

You may also need evidence (including medical information) from other people, to prove your grounds for divorce. Again, your lawyer will prepare the case to produce the proper evidence in court.

If the court is satisfied that your marriage has broken down, the judge will grant your divorce. Although you should not have to return to court after this, you are not free to remarry until the divorce takes effect, usually a month after it is granted. You remain married to your spouse until that time.

Be sure to obtain (from your lawyer or the court office) a copy of the divorce judgement. You will require it for a number of purposes.

V. WIFE ABUSE SERVICES

MANITOBA

Wife Abuse Crisis Line **1-800-362-3344**
(Toll free line outside Winnipeg)

Police/RCMP ..... (including Brandon) **911**
(outside Brandon) .... dial Operator and ask for ... **Zenith 50000**

For local police station/RCMP detachment .. (see local listings)

Legal Aid ..... Winnipeg **947-6501**
The Pas **623-6427**
Brandon **727-0633**
Thompson **778-6441**
Dauphin **638-8006**
Selkirk **482-7595**

Legal Services Information and **943-2305**
Lawyer Referral **1-800-262-8800**

WINNIPEG REGION

Winnipeg Crisis Line **942-3052**
(for battered women)

Osborne House (shelter) **775-8197**

Baldwin House **783-7129**
(Hostel for women and children)

Women's Advocacy Program **945-6851**
(legal and resource information)

Manitoba Committee on Wife Abuse **885-3302**

Fort Garry Women's Resource Centre **269-6836**

North End Women's Centre **589-7347**

Ma Mawi Wi Chi Itata Centre **774-6531**

Native Women's Transition Centre **586-8487**

Ikwe-Widdjiitiwin Inc. **772-0303**

Immigrant Women's Association of Manitoba Inc. **943-8612**

City of Winnipeg Social Services **986-4301**
Emergency Night Number **986-2626**

Family Services of Winnipeg **947-1401**

Family Conciliation **945-7336**

Police 911
Women In Second Stage Housing (WISH) 786-4440
Evolve (Domestic Abuse Counselling) 788-4402
Women's Post-Treatment Project Inc. 783-5460

INTERLAKE REGION

Lundar Eriksdale Ashern Crisis Line 768-3016
Evergreen Spouse Abuse Committee 378-5200
Selkirk Co-operative on Abuse Against Women 482-1200
or Toll Free (Interlake) 482-7100

WESTMAN REGION

Brandon-Westman Women's Shelter 727-3644
or Toll Free 1-800-862-2727
Minnedosa and Area Committee on Wife Abuse 867-3343
Rossburn Committee on Wife Abuse 859-2768
Russell Committee on Family Violence 773-2895
Killarney Committee on Wife Abuse 523-4667

CENTRAL REGION

South Central Committee on Family Violence 325-9956
Portage la Prairie Women's Shelter 239-5234
Carman Wife Abuse Committee 745-3434
Sandy Bay Wife Abuse Committee 843-2456

PARKLANDS REGION

Parkland Crisis Centre 638-8777
Swan River Committee on Abuse of Women 734-9368
(Monday, Wednesday, Friday 1 - 4 P.M.)

THOMPSON REGION

Thompson Crisis Centre 778-7273
or Toll Free 1-800-422-0613
Churchill Committee on Wife Abuse 675-8881

EASTMAN REGION

Steinbach Family Crisis Intervention Centre **326-6062**
Toll Free (within 100 mile radius of Steinbach) **326-3431**

Lac du Bonnet Committee on Wife Abuse **345-8280**

Springfield Committee on Family Violence **866-3585**

NORMAN REGION

Flin Flon Crisis/Creighton Crisis Centre **687-8255**

Snow Lake Centre on Family Violence **358-7141**

The Pas Committee for Women in Crisis Inc. **623-7427**

The Pas Aurora House (shelter) **623-5497**
Toll Free **1-800-442-0423**